

**APR 14 2006**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

LAVOR C. SPARKS,

Petitioner - Appellant,

v.

JAMES SCHOMIG; et al.,

Respondents - Appellees.

No. 05-15126

D.C. No. CV-02-01537-RLH

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
Roger L. Hunt, District Judge, Presiding

Submitted April 5, 2006<sup>\*\*</sup>

Before: HAWKINS, McKEOWN and PAEZ, Circuit Judges.

Nevada state prisoner Lavor C. Sparks appeals from the district court's judgment denying his 28 U.S.C. § 2254 petition challenging his conviction for

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

first-degree murder with use of a deadly weapon. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Sparks contends that there was insufficient evidence to support his conviction because there was no testimony that he explicitly stated that he intended to kill the victim, and because the circumstances lead to an inference that he intended to warn the victim rather than harm him. We agree with the state court that there was sufficient evidence to support the conviction for first-degree murder. *See Jackson v. Virginia*, 443 U.S. 307, 324 (1979).

Sparks further contends that the jury instructions on malice and on premeditation were unconstitutional. We conclude that any error in the jury instructions did not render the proceedings fundamentally unfair and thus did not violate Sparks's right to due process. *See Estelle v. McGuire*, 502 U.S. 62, 71-73 (1991).

Accordingly, we conclude that the state court's decision was not contrary to or an unreasonable application of clearly established federal law, as determined by the United States Supreme Court. *See* 28 U.S.C. § 2254(d).

**AFFIRMED.**